

**Rule 77.3. Withdrawing, Disposing of, and  
Unsealing Papers and Exhibits**

**(a) Withdrawing Papers and Exhibits.**

- (1) *In General.*** A paper or exhibit filed with the court may not be withdrawn from the office or custody of the clerk except by order of the court, but such an order should be entered only in extraordinary circumstances. ~~In the event of such withdrawal, the clerk must preserve a record of the paper or exhibit and the order of withdrawal.~~ Any withdrawal of a paper or exhibit pursuant to a court order must be recorded through an appropriate docket entry.

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(As revised and reissued May 1, 2002; as amended Nov. 15, 2007, Nov. 3, 2008, \_\_\_\_\_, 2009.)

**Rules Committee Notes**

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**2009 Amendment**

The last sentence of subdivision (a)(1) has been amended to clarify that the withdrawal of a paper or exhibit filed with the clerk must be recorded through an appropriate docket entry.

Further, as an historical note, we add that the current structure of RCFC 77.3 relates back to the restyling of the rule in 2008 when former subdivisions (a) and (b) were combined into the new subdivision (a) and the remaining subdivisions renumbered as subdivisions (b) and (c).

### **Rule 83.2. Attorney Discipline**

**(a) In General.** The United States Court of Federal Claims, in furtherance of its inherent power and responsibility to supervise the conduct of attorneys who are members of its bar, promulgates the following rule for attorney discipline.

**(b) Definitions.** For purposes of this rule, the following definitions apply:

**(1) *Another Court.*** Another court is defined as any court of the United States, the District of Columbia, or any U.S. state, territory, possession, or commonwealth.

**(2) *Serious Crime.*** A serious crime is defined as:

**(A)** any felony; or

**(B)** any lesser crime whose necessary elements, as determined by the statutory or common law definition of the crime in the jurisdiction where the conviction occurred, include:

**(i)** interference with the administration of justice;

**(ii)** false swearing;

**(iii)** misrepresentation;

**(iv)** fraud;

**(v)** willful failure to file an income tax return;

**(vi)** deceit;

**(vii)** bribery;

**(viii)** extortion;

**(ix)** misappropriation;

**(x)** theft; or

**(xi)** an attempt, conspiracy, or solicitation of another to commit a serious crime.

**(c) Grounds for Discipline.** An attorney admitted to practice before this court, including an attorney admitted for the purpose of a particular proceeding pursuant to RCFC 83.1(a)(2) or (b)(5), may be disciplined under this rule on any of the following grounds:

**(1)** the conviction by another court of a serious crime as defined in RCFC 83.2(b)(1) and (2);

**(2)** an act or omission that results in the attorney's disbarment or suspension by

another court;

**(3)** disbarment on consent or resignation from the bar of another court while an investigation into an allegation of misconduct is pending;

**(4)** failure to comply with the terms of this rule, including failure to notify the court in accordance with RCFC 83.2(e); or

**(5)** any conduct before the court that is unbecoming a member of the bar of this court.

#### **(d) Types of Discipline.**

**(1) *In General.*** An attorney disciplined for conduct identified in RCFC 83.2(c) may be:

**(A)** disbarred from the court;

**(B)** suspended from practice before the court;

**(C)** publicly or privately reprimanded;

**(D)** required to provide restitution or pay monetary sanctions; or

**(E)** subjected to other such disciplinary action as the circumstances may warrant.

#### **(2) *Sanctions Under Other Provisions.***

Assessment of damages, costs, expenses, or attorney fees under RCFC 11, 16, 37, or 45, 28 U.S.C. § 1927, or similar statutory provisions are not disciplinary sanctions within the meaning of this rule and are not governed by this rule.

#### **(e) Attorney's Duty to Notify the Court of a Conviction or Discipline Imposed by Another Court.**

**(1) *In General.*** An attorney admitted to practice before this court must notify the clerk in writing within 14 days of the attorney's:

**(A)** conviction by another court of a serious crime;

**(B)** disbarment or suspension by another court; or

**(C)** disbarment on consent or resignation from the bar of another court while an investigation into an allegation of misconduct is pending.

**(2) *Contents of Notification.*** The notification

must include:

- (A) the name of the court imposing the conviction or discipline;
- (B) the date of the court's action;
- (C) the docket number;
- (D) the offense committed; and
- (E) the discipline imposed.

**(f) Standing Panel on Attorney Discipline.**

**(1) *In General.*** All disciplinary matters will be referred to a Standing Panel on Attorney Discipline.

**(2) *Members.***

**(A) *Appointment.*** The chief judge will appoint three judges to the standing panel to serve staggered three-year terms, with the initial appointments being for one-, two-, and three-year terms and all subsequent appointments being for three-year terms.

**(B) *Eligibility for Reappointment.*** A judge who has served on the standing panel for three years will not be eligible for appointment to another term until three years after the termination of his or her last appointment.

**(C) *Chairperson.*** The standing panel will designate one of its members to serve as the chairperson.

**(3) *Unavailability of a Standing Panel Member.***

**(A) *To Hear a Particular Matter.*** If a member of the standing panel is unable or unavailable to hear a particular matter, the chief judge will appoint another judge to be a member of the panel for that matter.

**(B) *To Complete the Member's Term.*** If a member of the standing panel is unable to complete the remainder of his or her term, the chief judge will appoint another judge to serve the remainder of the term.

**(g) Initiating Disciplinary Proceedings.**

**(1) *Docketing.*** Consistent with RCFC 83.2(l), the clerk will maintain an

attorney disciplinary docket and will assign a number to each matter.

**(2) *Referring Matters to the Standing Panel.*** The clerk must refer to the standing panel:

**(A)** any information received from another court concerning a member of this court's bar involving disbarment, suspension, disbarment on consent, or resignation from the bar of another court while an investigation into an allegation of misconduct is pending; and

**(B)** any complaint regarding attorney misconduct received from a judge or special master of the court or a member of the public.

**(3) *Appointing Investigatory Counsel.***

**(A) *In General.*** The standing panel may appoint the court's staff attorney or other appropriate court personnel to investigate allegations of misconduct.

**(B) *Role of Investigatory Counsel.*** In conducting a disciplinary investigation, the investigatory counsel may:

**(i)** review the complaint and any relevant documents available at the court or provided by the complainant;

**(ii)** interview witnesses, including the complainant and the attorney subject to the proceeding;

**(iii)** provide to the standing panel, at the panel's request, a report detailing the investigatory counsel's findings; and

**(iv)** take any additional steps that are reasonably necessary to effectuate the investigation.

**(4) *Issuing and Serving a Show Cause Order.*** To initiate a disciplinary proceeding, the standing panel must:

**(A)** issue a show cause order describing the attorney's alleged misconduct and directing the attorney to show cause

why a specific discipline should not be imposed or why a discipline to be determined at a later date should not be imposed; and

(B) serve the order on the attorney in accordance with RCFC 83.2(m).

(5) **Presumed Discipline.** Unless the standing panel concludes that a different discipline may be appropriate, the following discipline is presumed to apply and should be identified in the show cause order:

(A) **For Conviction by Another Court of a Serious Crime.** Disbarment is the presumed discipline for the conviction by another court of a serious crime.

(B) **For Disbarment or Suspension by Another Court.** Reciprocal disbarment or suspension is the presumed discipline for an act or omission that results in an attorney's disbarment or suspension by another court.

(C) **For Disbarment on Consent or Resignation From the Bar of Another Court.** Reciprocal disbarment is the presumed discipline for an attorney's disbarment on consent or resignation from the bar of another court while an investigation into an allegation of misconduct is pending.

(D) **For Conduct Unbecoming a Member of the Bar of this Court.** There is no presumed discipline for conduct that is unbecoming a member of the bar of this court; the standing panel will determine the appropriate discipline.

(6) **Responding to a Show Cause Order.** Unless otherwise ordered, an attorney must file any response to a show cause order within 30 days after service of the order. Any request for a hearing must be included in the response.

(7) **Dismissing a Matter Without Further Proceedings.** The standing panel may dismiss a matter without further proceedings if the panel concludes that the allegation on its face is insufficient to warrant the imposition of any discipline.

(h) **Proceedings Before the Standing Panel.**

(1) **Representation by Counsel.** An attorney may be represented by counsel in any disciplinary proceeding before the standing panel.

(2) **Suspending an Attorney.** The standing panel will immediately suspend an attorney from practicing before the court upon notice that an attorney:

(A) has been convicted by another court of a serious crime; or

(B) has been disbarred, suspended, disbarred on consent, or resigned from the bar of another court while an investigation into an allegation of misconduct is pending,

(3) **Record of the Proceeding.**

(A) **Content.** The record will consist of the show cause order, the response to the order, all evidentiary materials, and all documents, briefs, and memoranda submitted to or considered by the standing panel or the court.

(B) **Withholding Information.** Information will be withheld from an attorney only in extraordinary circumstances, e.g., for national security or criminal investigation purposes.

(C) **Copying and Responding to Documents.** If the record includes documents in addition to the show cause order and the response, an attorney must be given the opportunity to inspect and copy the additional documents at his or her expense and, if the attorney contests the charge but has not requested a hearing, must be given the opportunity to file a supplemental

response.

- (4) **Issuing a Final Order in an Uncontested Matter.** If an attorney does not respond to a show cause order issued pursuant to RCFC 83.2(g)(4) or does not object to the imposition of discipline, the standing panel may issue a final order imposing such discipline.

- (5) **Conducting a Hearing in a Contested Matter.**

(A) **In General.** If an attorney requests a hearing in his or her response to a show cause order or in a supplemental response filed pursuant to RCFC 83.2(h)(3)(C), the standing panel will schedule a hearing and will determine whether the submission of evidence, including the calling of witnesses, is appropriate.

(B) **Notice of Hearing.** An attorney must be given at least 30 days' notice of the time, date, and place of the hearing.

- (C) **Presumptions.**

(i) **For Conviction by Another Court of a Serious Crime.** When an attorney has been convicted by another court of a serious crime, the standing panel:

- (I) will treat the conviction as conclusive evidence of the commission of that crime, whether the conviction resulted from a plea of guilty or nolo contendere or from a verdict after trial or otherwise, and regardless of the pendency of any appeal; and
- (II) will limit further proceedings to a determination of the final discipline to be imposed.

(ii) **For Disbarment, Suspension,**

**Disbarment on Consent, or Resignation From the Bar of Another Court.** The standing panel will treat an attorney's disbarment, suspension, disbarment on consent, or resignation from the bar of another court while an investigation into an allegation of misconduct is pending as conclusive evidence that the misconduct in fact occurred and that the discipline was appropriate unless the standing panel concludes that:

- (I) the procedure was so lacking in notice or an opportunity to be heard that it constituted a deprivation of due process;
- (II) there was such an infirmity of proof establishing the misconduct that this court could not, consistent with its duty, accept as final the conclusion on the matter;
- (III) the imposition of the same discipline by this court would result in grave injustice; or
- (IV) the misconduct established is deemed to warrant substantially different discipline.

(D) **Subpoena.** The standing panel may compel by subpoena:

- (i) the attendance of witnesses, including the attorney subject to the proceeding; and
- (ii) the production of documents.

(E) **Cross-Examining Witnesses.** The attorney subject to the proceeding must be afforded an opportunity to cross-examine any witnesses called

by the standing panel and to introduce evidence in defense or mitigation.

(F) **Recording.** A hearing will be digitally recorded unless an attorney arranges to have a reporting service present at his or her own expense.

(G) **Post-Hearing Brief.** The standing panel may order the filing of a post-hearing brief, which may include, at the panel's direction, either a statement of facts or proposed findings of fact. Post-hearing briefing is not a matter of right.

(H) **Issuing a Final Order.** Following the conclusion of the disciplinary proceeding, the standing panel will issue a final order.

(6) **Reporting a Final Order.** The standing panel may:

(A) direct the attorney or the clerk to send a copy of the final order to all other courts before which the attorney is admitted; and

(B) direct the clerk to notify the National Disciplinary Data Bank of the discipline imposed.

(i) **Disbarment on Consent While Disciplinary Proceeding Is Pending.**

(1) **In General.** At an attorney's request and upon receipt of the affidavit required under RCFC 83.2(i)(2), the standing panel may cease any investigation or proceeding being conducted under this rule and may enter an order disbarring the attorney on consent.

(2) **Affidavit.** To initiate a disbarment on consent, an attorney must file an affidavit stating that:

(A) the attorney is aware that an investigation or proceeding involving allegations of the attorney's misconduct is currently pending, along with a statement setting forth the specifics of those allegations;

(B) the attorney acknowledges that the material facts so alleged are true;

(C) the attorney consents to disbarment;

(D) the attorney is freely and voluntarily rendering consent, is not being subjected to coercion or duress, and is fully aware of the implications of such consent; and

(E) the attorney consents to disbarment because the attorney knows that if charges were brought on the matters under investigation, the attorney could not present a successful defense.

(j) **Review of the Standing Panel's Final Order.**

(1) **A Petition for Rehearing.**

(A) **In General.** An attorney may seek review of the standing panel's final order either by:

(i) filing a petition for rehearing by the standing panel; or

(ii) filing a combined petition for rehearing by the standing panel and suggestion for rehearing by the active judges of the court.

(B) **Contents.** The petition must state with particularity each point of law or fact that the petitioner believes the standing panel has overlooked or misapprehended.

(C) **Time for Filing.** Any petition for rehearing must be filed within 14 days after entry of the standing panel's final order.

(2) **By Order of the Court.** A majority of the active judges may order that a disciplinary matter be reheard by the active judges of the court.

(3) **Limitations on Rehearing by the Active Judges of the Court.** A rehearing by the active judges of the court is not favored and will generally not be ordered except when necessary to secure or maintain uniformity of the court's decisions or when the proceeding involves a question of exceptional importance.

(k) **Reinstatement.**

(1) **A Petition for Reinstatement.**

(A) **Contents.** A petition for reinstatement must demonstrate by clear and convincing evidence that:

- (i) the petitioner has the necessary moral qualifications, competency, and learning in the law required for readmission; and
- (ii) the petitioner's resumption of the practice of law will not be detrimental to the integrity and standing of the bar, to the administration of justice, or to the public interest.

If a hearing is requested, such request must be included in the petition.

(B) **Time for Filing.**

- (i) **After Conviction by Another Court of a Serious Crime.** If disbarment by this court was imposed based on an attorney's conviction by another court of a serious crime, the attorney may file a petition for reinstatement only when the conviction is vacated or reversed.
- (ii) **After Disbarment or Suspension by Another Court.** If disbarment or suspension by this court was imposed reciprocally based on an attorney's disbarment or suspension by another court, the attorney may file a petition for reinstatement only when the original discipline is lifted or expires.
- (iii) **After Disbarment.** An attorney who has been disbarred as a result of conduct that is unbecoming a member of the bar of this court may file a petition for reinstatement any time after the expiration of three years from the effective date of the disbarment.

(iv) **After Suspension.**

(I) **When Reinstatement Is Not Automatic.** If the order suspending an attorney for conduct that is unbecoming a member of the bar of this court does not include an automatic right of reinstatement, such attorney may file a petition for reinstatement after the suspension period expires.

(II) **When Reinstatement Is Automatic.** If the original suspension order directs that reinstatement be automatic, the standing panel will issue an order reinstating the attorney within 14 days after receiving the attorney's affidavit of compliance with the suspension order.

(v) **Successive Petitions.** An attorney may not file a successive petition for reinstatement until the expiration of at least one year from the date of an adverse judgment on an earlier petition.

(C) **Fees and Costs.** The standing panel may direct that the petitioner provide an advance cost deposit in an amount set by the panel to cover anticipated costs of the reinstatement proceeding.

(2) **Conducting a Hearing.** The standing panel will conduct a hearing on a petition for reinstatement if:

- (A) the petitioner requests such a hearing; and
- (B) the panel is not satisfied based on the petition alone that reinstatement is appropriate.

(3) **Issuing a Final Order.** The standing

panel will issue a final order, with or without a hearing, either:

- (A) denying the petition for reinstatement; or
- (B) granting the petition if the panel determines that the petitioner is fit to resume the practice of law and concludes, upon a showing of good cause, that it would be in the interest of justice to reinstate the petitioner.

**(4) Conditions of Reinstatement.**

(A) **In General.** Reinstatement may be conditioned on the payment of all or part of the costs of the reinstatement proceeding and on the making of partial or complete restitution to any parties harmed by the conduct that led to the petitioner's suspension or disbarment.

(B) **For Disbarment or Suspension of Five Years or More.** If the petitioner has been disbarred or suspended for five years or more, reinstatement may, in the discretion of the standing panel, additionally be conditioned on the furnishing of proof of competency and learning in law, including a certification by the bar examiners of a state or other jurisdiction of the petitioner's successful completion of an examination for admission to practice subsequent to the date of disbarment or suspension.

**(I) Access to Information.**

(1) **Confidentiality of an Ongoing Disciplinary Proceeding.** An ongoing disciplinary proceeding must be kept confidential unless:

- (A) the attorney subject to the proceeding requests that the proceeding, including any hearing before the standing panel and the record compiled in the matter pursuant to RCFC 83.2(h)(3), be open to the public; or
- (B) the standing panel determines that it

is appropriate to disclose the subject matter and status of a proceeding where:

- (i) the proceeding is based on the conviction by another court of a serious crime;
- (ii) the proceeding is based on an allegation that has become generally known to the public; or
- (iii) there is a need to notify a person or entity to protect the public, the legal profession, or the administration of justice.

**(2) Confidentiality After Issuance of a Final Order.**

(A) **When No Discipline or a Private Reprimand Is Imposed.** If the final order imposes no discipline or imposes a private reprimand, the record of the proceeding compiled pursuant to RCFC 83.2(h)(3) must be kept confidential unless the attorney subject to the proceeding requests that it be made part of the public record.

(B) **When an Attorney Is Disbarred on Consent.** An order disbarring an attorney on consent must be made part of the public record, but the affidavit required under RCFC 82.3(i)(2) may not be publicly disclosed or made available for use in any other proceeding except on order of the standing panel.

(C) **All Other Cases.** If other discipline is imposed, the final order and the record of the proceeding must be made part of the public record at the time the final order is issued. The standing panel may, however, issue a permanent protective order prohibiting the disclosure of any part of the record to protect the interest of a complainant, a witness, a third party or nonparty, or the attorney subject to the proceeding.



**(m) Service.**

**(1) *Show Cause Order.*** A show cause order must be served in person or by registered or certified mail addressed to the attorney at the attorney's last known address. If service by registered or certified mail is ineffective, the standing panel must enter an order as appropriate to effect service.

**(2) *All Other Papers and Notices.*** Any other paper or notice is served by mailing the paper or notice to the attorney's last known address.

**(n) Retention of Authority.** Nothing contained in this rule should be construed to deny an individual judge the authority to maintain control over court proceedings, such as proceedings for contempt, issuance of public reprimands, or the imposition of fines of not more than \$1,000.00.

(As revised and reissued May 1, 2002; as amended Nov. 3, 2008, \_\_\_\_\_, 2009.)

**Rules Committee Notes**

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**2009 Amendment**

RCFC 83.2 has been rewritten in its entirety. The new rule is intended to simplify the court's procedures for the disposition of attorney discipline matters by providing for the appointment, by the chief judge, of a three-member standing panel of the court's judges to address all aspects of the disciplinary process, from the investigation of charges, to the conduct of hearings, to the determination of appropriate discipline.

**FORM 6A**  
**SUBPOENA TO APPEAR AND TESTIFY AT A HEARING OR TRIAL**

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**United States Court of Federal Claims**

vs.

No. \_\_\_\_\_

THE UNITED STATES

**SUBPOENA TO APPEAR AND TESTIFY  
AT A HEARING OR TRIAL**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a hearing or trial in the above-captioned case. When you arrive, you must remain at the court until the judge or a court officer allows you to leave. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:	Courtroom No.:
	Date and Time:

You must also bring with you the following documents, electronically stored information, or objects (*blank if not applicable*):

\_\_\_\_\_  
The provisions of RCFC 45(c), relating to your protection as a person subject to a subpoena, and RCFC 45(d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: \_\_\_\_\_

CLERK OF COURT

OR

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

\_\_\_\_\_  
*Attorney's signature*

NOTE - If the place of travel is more than 100 miles (by the shortest usual means of travel) from the place where the subpoena is served, or if the place of the hearing or trial is more than 100 miles from the place where the person served resides, is employed, or transacts business in person, the person served may regard the command as optional unless there is attached to the subpoena an order of the court requiring his/her appearance notwithstanding the distance of travel. In any event, response to the subpoena will entitle the person to the fees and mileage allowed by law. (28 U.S.C. §1821)

\_\_\_\_\_  
The name, address, e-mail, and telephone number of the attorney representing (*name of party*) \_\_\_\_\_  
\_\_\_\_\_, who issues or requests this subpoena, are: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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**PROOF OF SERVICE**

This subpoena for (*name of individual and title, if any*) \_\_\_\_\_  
was received by me on (*date*) \_\_\_\_\_.

☐ I personally served the subpoena on the individual at (*place*) \_\_\_\_\_  
\_\_\_\_\_ on (*date*) \_\_\_\_\_; or

☐ I left the subpoena at the individual's residence or usual place of abode with (*name*) \_\_\_\_\_  
\_\_\_\_\_, a person of suitable age and discretion who resides there,  
on (*date*) \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the subpoena on (*name of individual*) \_\_\_\_\_ who is designated by law to accept  
service of process on behalf of (*name of organization*) \_\_\_\_\_  
\_\_\_\_\_ on (*date*) \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because \_\_\_\_\_; or

☐ Other (*specify*):

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness  
fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding service, etc:

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RCFC 45.

**(c) Protecting a Person Subject to a Subpoena.**

- (1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.
- (2) ***Command to Produce Materials or Permit Inspection.***
- (A) ***Appearance Not Required.*** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

- (B) ***Objections.*** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:
- (i) At any time, on notice to the commanded person, the serving party may move the court for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is

neither a party nor a party's officer from significant expense resulting from compliance.

(3) ***Quashing or Modifying a Subpoena.***

(A) ***When Required.*** On timely motion, the court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person—except that, subject to RCFC 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place;
- (iii) requires disclosure of privileged or other protected matter, if no exception of waiver applies; or
- (iv) subjects a person to undue burden.

(B) ***When Permitted.*** To protect a person subject to or affected by a subpoena, the court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information;
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or
- (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) ***Specifying Conditions as an Alternative.*** In the circumstances described in RCFC 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(d) **Duties in Responding to a Subpoena.**

(1) ***Producing Documents or Electronically Stored Information.***

These procedures apply to producing documents or electronically stored information:

(A) ***Documents.*** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) ***Form for Producing Electronically Stored Information Not Specified.*** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) ***Electronically Stored Information Produced in Only One Form.*** The person responding need not produce the same electronically stored information in more than one form.

(D) ***Inaccessible Electronically Stored Information.*** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because

of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of RCFC 26(b)(2)(C). The court may specify conditions for discovery.

(2) ***Claiming Privilege or Protection.***

(A) ***Information Withheld.*** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) ***Information Produced.*** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(e) ***Contempt.*** The court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of RCFC 45(c)(3)(A)(ii).

**FORM 6B**  
**SUBPOENA TO TESTIFY AT A DEPOSITION OR TO PRODUCE DOCUMENTS**

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**United States Court of Federal Claims**

vs.

No. \_\_\_\_\_

*THE UNITED STATES*

**SUBPOENA TO TESTIFY AT A DEPOSITION  
OR TO PRODUCE DOCUMENTS**

To: \_\_\_\_\_

☐ **Testimony:** **YOU ARE COMMANDED** to appear at the time, date, and place set forth below to testify at a deposition to be taken in the above-captioned case. If you are an organization that is *not* a party in this case, you must designate one or more officers, directors, or managing agents, or designate other persons who consent to testify on your behalf about the following matters, or those set forth in an attachment:

Place:

Date and Time:

The deposition will be recorded by this method: \_\_\_\_\_

☐ **Production:** You, or your representatives, must also bring with you to the deposition the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

\_\_\_\_\_  
The provisions of RCFC 45(c), relating to your protection as a person subject to a subpoena, and RCFC 45(d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: \_\_\_\_\_

*CLERK OF COURT*

OR

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

\_\_\_\_\_  
*Attorney's signature*

NOTE - If the place of travel is more than 100 miles (by the shortest usual means of travel) from the place where the subpoena is served, or if the place of the deposition is more than 100 miles from the place where the deponent resides, is employed, or transacts business in person, the person served may regard the command as optional unless there is attached to the subpoena an order of the court requiring his/her appearance notwithstanding the distance of travel. In any event, response to the subpoena will entitle the person to the fees and mileage allowed by law. (28 U.S.C. §1821)

The name, address, e-mail, and telephone number of the attorney representing (*name of party*) \_\_\_\_\_, who issues or requests this subpoena, are: \_\_\_\_\_

### PROOF OF SERVICE

This subpoena for (*name of individual and title, if any*) \_\_\_\_\_ was received by me on (*date*) \_\_\_\_\_.

☐ I personally served the subpoena on the individual at (*place*) \_\_\_\_\_ on (*date*) \_\_\_\_\_; or

☐ I left the subpoena at the individual's residence or usual place of abode with (*name*) \_\_\_\_\_, a person of suitable age and discretion who resides there, on (*date*) \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the subpoena on (*name of individual*) \_\_\_\_\_ who is designated by law to accept service of process on behalf of (*name of organization*) \_\_\_\_\_ on (*date*) \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because \_\_\_\_\_; or

☐ Other (*specify*): \_\_\_\_\_

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding service, etc:

RCFC 45.

**(c) Protecting a Person Subject to a Subpoena.**

- (1) ***Avoiding Undue Burden or Expense; Sanctions.*** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

- (2) ***Command to Produce Materials or Permit Inspection.***

(A) ***Appearance Not Required.*** A person commanded to

produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

- (B) ***Objections.*** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to

producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

**(3) Quashing or Modifying a Subpoena.**

**(A) When Required.** On timely motion, the court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person—except that, subject to RCFC 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place;
- (iii) requires disclosure of privileged or other protected matter, if no exception of waiver applies; or
- (iv) subjects a person to undue burden.

**(B) When Permitted.** To protect a person subject to or affected by a subpoena, the court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information;
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or
- (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) Specifying Conditions as an Alternative.** In the circumstances described in RCFC 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(d) Duties in Responding to a Subpoena.**

**(1) Producing Documents or Electronically Stored Information.**

These procedures apply to producing documents or electronically stored information:

**(A) Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) Electronically Stored Information Produced in Only One Form.** The person responding need not produce the

same electronically stored information in more than one form.

**(D) Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of RCFC 26(b)(2)(C). The court may specify conditions for discovery.

**(2) Claiming Privilege or Protection.**

**(A) Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) Contempt.** The court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of RCFC 45(c)(3)(A)(ii).

**FORM 6C**  
**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR OBJECTS**  
**OR TO PERMIT INSPECTION OF PREMISES**

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**United States Court of Federal Claims**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

vs.

No. \_\_\_\_\_

*THE UNITED STATES*

**SUBPOENA TO PRODUCE DOCUMENTS, INFORMATION, OR**  
**OBJECTS OR TO PERMIT INSPECTION OF PREMISES**

To: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

☐ *Production:* **YOU ARE COMMANDED** to produce at the time, date, and place set forth below the following documents, electronically stored information, or objects, and permit their inspection, copying, testing, or sampling of the material:

Place:	Date and Time:
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☐ *Inspection of Premises:* **YOU ARE COMMANDED** to permit entry onto the designated premises, land, or other property possessed or controlled by you at the time, date, and location set forth below, so that the requesting party may inspect, measure, survey, photograph, test, or sample the property or any designated object or operation on it.

Place:	Date and Time:
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The provisions of RCFC 45(c), relating to your protection as a person subject to a subpoena, and RCFC 45(d) and (e), relating to your duty to respond to this subpoena and the potential consequences of not doing so, are attached.

Date: \_\_\_\_\_

*CLERK OF COURT*

OR

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

\_\_\_\_\_  
*Attorney's signature*

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NOTE - If the place of travel is more than 100 miles (by the shortest usual means of travel) from the place where the subpoena is served, or if the place for production is more than 100 miles from the place where the person served resides, is employed, or transacts business in person, the person served may regard the command as optional unless there is attached to the subpoena an order of the court requiring his/her appearance notwithstanding the distance of travel. In any event, response to the subpoena will entitle the person to the fees and mileage allowed by law. (28 U.S.C. §1821)



The name, address, e-mail, and telephone number of the attorney representing *(name of party)* \_\_\_\_\_, who issues or requests this subpoena, are: \_\_\_\_\_

### PROOF OF SERVICE

This subpoena for *(name of individual and title, if any)* \_\_\_\_\_ was received by me on *(date)* \_\_\_\_\_.

☐ I personally served the subpoena on the individual at *(place)* \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I left the subpoena at the individual's residence or usual place of abode with *(name)* \_\_\_\_\_, a person of suitable age and discretion who resides there, on *(date)* \_\_\_\_\_, and mailed a copy to the individual's last known address; or

☐ I served the subpoena on *(name of individual)* \_\_\_\_\_ who is designated by law to accept service of process on behalf of *(name of organization)* \_\_\_\_\_ on *(date)* \_\_\_\_\_; or

☐ I returned the subpoena unexecuted because \_\_\_\_\_; or

☐ Other *(specify)*:

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of \$ \_\_\_\_\_.

My fees are \$ \_\_\_\_\_ for travel and \$ \_\_\_\_\_ for services, for a total of \$ \_\_\_\_\_.

I declare under penalty of perjury that this information is true.

Date: \_\_\_\_\_

\_\_\_\_\_  
*Server's signature*

\_\_\_\_\_  
*Printed name and title*

\_\_\_\_\_  
*Server's address*

Additional information regarding service, etc:

RCFC 45.

**(c) Protecting a Person Subject to a Subpoena.**

- (1) Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

**(2) Command to Produce Materials or Permit Inspection.**

- (A) Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises,

need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

- (B) Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the

following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for an order compelling production or inspection.
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**(3) *Quashing or Modifying a Subpoena.***

**(A) *When Required.*** On timely motion, the court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person—except that, subject to RCFC 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place;
- (iii) requires disclosure of privileged or other protected matter, if no exception of waiver applies; or
- (iv) subjects a person to undue burden.

**(B) *When Permitted.*** To protect a person subject to or affected by a subpoena, the court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information;
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or
- (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

**(C) *Specifying Conditions as an Alternative.*** In the circumstances described in RCFC 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

**(d) *Duties in Responding to a Subpoena.***

**(1) *Producing Documents or Electronically Stored Information.***

These procedures apply to producing documents or electronically stored information:

**(A) *Documents.*** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

**(B) *Form for Producing Electronically Stored Information Not Specified.*** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

**(C) *Electronically Stored Information Produced in Only One Form.*** The person responding need not produce the same electronically stored information in more than one form.

**(D) *Inaccessible Electronically Stored Information.*** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of

undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of RCFC 26(b)(2)(C). The court may specify conditions for discovery.

**(2) *Claiming Privilege or Protection.***

**(A) *Information Withheld.*** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

**(B) *Information Produced.*** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

**(e) *Contempt.*** The court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of RCFC 45(c)(3)(A)(ii).

**APPENDIX B**  
**VACCINE RULES OF THE UNITED STATES COURT**  
**OF FEDERAL CLAIMS**

**TITLE I. SCOPE OF RULES ;**  
**COMMENCING AN ACTION**

**Rule 1. Scope of Rules**

- (a) **In General.** These rules govern all proceedings before the United States Court of Federal Claims pursuant to the National Childhood Vaccine Injury Act, as amended, 42 U.S.C. §§ 300aa-1 to -34 (Vaccine Act), including proceedings before the Office of Special Masters and any subsequent proceedings before a judge of the Court of Federal Claims.
- (b) **Matters Not Specifically Addressed by the Vaccine Rules.** In any matter not specifically addressed by the Vaccine Rules, the special master or the court may regulate the applicable practice, consistent with these rules and with the purpose of the Vaccine Act, to decide the case promptly and efficiently.
- (c) **Applying the RCFC.** The RCFC apply only to the extent they are consistent with the Vaccine Rules.

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

**Rule 2. Commencing an Action.**

- (a) **In General.** A proceeding for compensation under the Vaccine Act is commenced by filing a petition with the United States Court of Federal Claims. Only one petition may be filed with respect to each administration of a vaccine.
- (b) **Method of Filing; Filing Fee.** Petitioner must forward an original and two copies of the petition, along with the required filing fee, by mail or other delivery, to:
- Clerk  
United States Court of Federal Claims  
717 Madison Place, NW  
Washington, DC 20005.
- A copy of the applicable schedule of fees may

be found on the court's website at [www.uscfc.uscourts.gov](http://www.uscfc.uscourts.gov) or may be obtained by contacting the clerk's office.

(c) **Contents of a Petition.**

- (1) **The Petition.** The petition must set forth:

- (A) a short and plain statement of the grounds for an award of compensation, including:
- (i) the name of the individual to whom the vaccine was administered;
  - (ii) the date and place of the vaccination;
  - (iii) a specific description of the injury alleged; and
  - (iv) whether the injury claimed is contained within the Vaccine Injury Table (see "Guidelines for Practice Under the National Vaccine Injury Compensation Program," Attachment 8, posted on the court's website at [www.uscfc.uscourts.gov](http://www.uscfc.uscourts.gov)); and
- (B) a specific demand for relief to which the petitioner asserts entitlement or a statement that such demand will be deferred pursuant to 42 U.S.C. § 300aa-11(e).

- (2) **Required Attachments.** As required by 42 U.S.C. § 300aa-11(c), the petition must be accompanied by the following documents:

- (A) **Medical Records.** The petitioner must include all available medical records supporting the allegations in the petition, including physician and hospital records relating to:
- (i) the vaccination itself;
  - (ii) the injury or death, including, if applicable, any autopsy

reports or death certificate;

- (iii) any post-vaccination treatment of the injured person, including all in-patient and out-patient records, provider notes, test results, and medication records; and
- (iv) if the injured person was younger than five years when vaccinated, the mother's pregnancy and delivery records and the infant's lifetime records, including physicians' and nurses' notes, test results, and well-baby visit records, as well as growth charts, until the date of vaccination.

**(B) Affidavits.**

- (i) If the required medical records are not submitted, the petitioner must include an affidavit detailing the efforts made to obtain such records and the reasons for their unavailability.
- (ii) If petitioner's claim does not rely on medical records alone but is also based in any part on the observations or testimony of any person, the petitioner should include the substance of each person's proposed testimony in a detailed affidavit(s) supporting all elements of the allegations made in the petition.

- (C) Proof of Authority to File in a Representative Capacity.** If the petition is filed on behalf of a deceased person or is filed by an individual other than the injured person or the parent of an injured minor, the petition must also be accompanied by documents

establishing the authority to file the petition in a representative capacity or a statement explaining when such documentation will be available.

- (d) Format.** All documents accompanying the petition must be assembled into one or more bound volume(s) or three-ring notebook(s). Each bound volume or notebook must contain the caption of the case and a table of contents, and all pages of each bound volume or notebook must be numbered consecutively.

**(e) Service.**

- (1)** The petitioner must serve one copy of the petition and accompanying documents on the Secretary of Health and Human Services, by first class or certified mail, to:

Director, Division of Vaccine Injury Compensation  
Healthcare Systems Bureau  
Parklawn Building, Room 11C-26  
5600 Fishers Lane  
Rockville, MD 20857.

- (2)** The clerk must serve one copy of the petition and accompanying documents on the Attorney General.

(As revised and reissued May 1, 2002; as amended Sept. 15, 2003, Aug. 2, 2005, \_\_\_\_\_.)

## **TITLE II. PROCEEDINGS BEFORE THE SPECIAL MASTER**

### **Rule 3. Role of the Special Master**

- (a) Case Assignment.** After a petition has been filed with the clerk, the chief special master will assign the case to a special master to conduct proceedings in accordance with the Vaccine Rules
- (b) Duties.** The special master is responsible for:
- (1)** conducting all proceedings, including taking such evidence as may be appropriate, making the requisite findings of fact and conclusions of law,

- preparing a decision, and determining the amount of compensation, if any, to be awarded; and
- (2) endeavoring to make the proceedings expeditious, flexible, and less adversarial, while at the same time affording each party a full and fair opportunity to present its case and creating a record sufficient to allow review of the special master's decision.
- (c) **Absence.** In the absence of the assigned special master, the chief special master may act on behalf of the special master or designate another special master to act.
- (d) **Reassignment.** When necessary for the efficient administration of justice, the chief special master may reassign the case to another special master.

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

**Rule 4. Respondent's Review of Petitioner's Records; Early Status Conference; Respondent's Report**

- (a) **Respondent's Review of Petitioner's Records.**
  - (1) **In General.** Within 30 days after the filing of a petition, respondent must review the accompanying documents to determine whether all information necessary to enable respondent to evaluate the merits of the claim has been filed.
  - (2) **Missing Documents.** If respondent concludes that relevant documents are missing, respondent must immediately notify petitioner regarding the perceived omission.
  - (3) **Disagreement Between the Parties.** If the parties disagree about the completeness of the records filed or the relevance of the requested information, either party may request the special master to resolve the matter.
- (b) **Early Status Conference.** The special master may convene an early status

conference within 45 days after the filing of the petition to discuss the case.

(c) **Respondent's Report.**

- (1) **In General.** Within 90 days after the filing of a petition, or in accordance with any schedule set by the special master after petitioner has satisfied all required documentary submissions, respondent must file a report setting forth a full and complete statement of its position as to why an award should or should not be granted.
- (2) **Contents.** The report must contain respondent's medical analysis of petitioner's claims and must present any legal arguments that respondent may have in opposition to the petition. General denials are not sufficient.

(As revised and reissued May 1, 2002; as amended Aug. 2, 2005, \_\_\_\_\_.)

**Rule 5. Preliminary Status Conference and Tentative Findings and Conclusions**

- (a) **In General.** The special master will hold a status conference within 30 days after the filing of respondent's report under Vaccine Rule 4(c) to:
  - (1) afford the parties an opportunity to address each other's positions;
  - (2) review the materials submitted and evaluate the parties' respective positions; and
  - (3) present tentative findings and conclusions.
- (b) **Scheduling Order.** At the conclusion of this status conference, the special master may issue a scheduling order outlining the necessary proceedings for resolving the issues presented in the case.

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

**Rule 6. Informal Status Conferences**

- (a) **In General.** To expedite the processing of the case, the special master will conduct informal status conferences on a periodic

basis.

- (b) **Input From the Parties.** A party may:
- (1) request a status conference at any time; and
  - (2) propose procedures to aid in resolving the case in the least adversarial and most efficient way possible.

(As revised and reissued May 1, 2002; as amended \_\_\_\_\_.)

#### **Rule 7. Discovery**

- (a) **In General.** There is no discovery as a matter of right. The informal and cooperative exchange of information is the ordinary and preferred practice.
- (b) **Formal Discovery.**
- (1) **By Motion.** If a party believes that informal discovery is not sufficient, the party may move the special master, either orally during a status conference or by filing a motion, to employ any of the discovery procedures set forth in RCFC 26–37.
  - (2) **Contents of the Motion.** The moving party must indicate the discovery sought and state with particularity the reasons therefor, including an explanation as to why informal discovery techniques have not been sufficient.
- (c) **Subpoena.** On the request of a party, the special master may approve the issuance of a subpoena pursuant to RCFC 45. See RCFC Appendix of Forms, Form 7A

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

#### **Rule 8. Taking Evidence; Hearing Argument**

- (a) **In General.** The special master will determine the format for taking evidence and hearing argument based on the specific circumstances of each case and after consultation with the parties.
- (b) **Evidence.**
- (1) **Rules.** In receiving evidence, the special master will not be bound by

common law or statutory rules of evidence but must consider all relevant and reliable evidence governed by principles of fundamental fairness to both parties.

- (2) **Form.** The parties may present evidence in the form of documents, affidavits, or oral testimony which may be given in person or by telephone, videoconference, or videotape.
- (c) **Conducting an Evidentiary Hearing.**
- (1) **Purpose.** The special master may conduct an evidentiary hearing to provide for the questioning of witnesses either by the special master or by counsel, or for the submission of sworn testimony in written form.
  - (2) **Subpoenas.** The special master may order the clerk or counsel to issue a subpoena requiring the attendance of a witness at the hearing.
  - (3) **Transcript.** A transcript of the hearing will be prepared in conformity with RCFC 80.1.
- (d) **Decision Without an Evidentiary Hearing.** The special master may decide a case on the basis of written submissions without conducting an evidentiary hearing. Submissions may include a motion for summary judgment, in which event the procedures set forth in RCFC 56 will apply.
- (e) **Hearing Argument.** The special master may hear argument during a scheduled telephone conference or a hearing, or through written submissions. The special master may establish requirements for any written submissions, e.g., contents or page limitations, as appropriate.
- (f) **Waiver of a Fact or Argument.**
- (1) **In General.** Any fact or argument not raised specifically in the record before the special master will be considered waived and cannot be raised by either party in proceedings on review of a special master's decision.
  - (2) **Exception.** This rule does not apply to legal arguments raised by the party that stands in the role of the appellee on

review.

(As revised and reissued May 1, 2002, as renumbered and amended \_\_\_\_\_.)

#### **Rule 9. Suspending Proceedings**

- (a) In General.** On motion of a party and for good cause shown, the special master may suspend proceedings on a petition.
- (b) Period of Suspension.**
  - (1) Initial Motion.** The special master will grant an initial motion for suspension, filed by either party, for a period of 30 days.
  - (2) Subsequent Motions.** The special master may grant subsequent motions for suspension, if deemed appropriate, for not more than 150 additional days in total.
- (c) Effect.** All periods of suspension will be excluded for purposes of the time limitations set forth in 42 U.S.C. § 300aa-12(d)(3)(A) and Vaccine Rules 4(c) and 10.

(As revised and reissued May 1, 2002; as amended June 20, 2006, \_\_\_\_\_.)

#### **Rule 10. Decision of the Special Master**

- (a) In General.** Pursuant to 42 U.S.C. § 300aa-12(d)(3)(A), the special master will issue a decision on the petition with respect to whether an award of compensation is to be made and, if so, the amount thereof.
- (b) Timing.** The special master must issue a decision on the petition within 240 days after the date the petition was filed, exclusive of all periods of suspension pursuant to Vaccine Rule 9.
- (c) Effect.** The special master's decision concludes the proceedings on the petition, except for any ancillary proceedings pursuant to Vaccine Rules 12(b) or 13.
- (d) Failing to Issue a Timely Decision.**
  - (1) Notice to Petitioner.** If the special master fails to issue a decision within the time specified in Vaccine Rule 10(b), the special master must file a notice to petitioner pursuant to 42

U.S.C. § 300aa-12(g)(1).

- (2) Notice to Continue or to Withdraw the Petition.** Within 30 days after the date of filing of the special master's notice, the petitioner may file a notice to continue or to withdraw the petition pursuant to 42 U.S.C. § 300aa-21(b).
- (3) Concluding Proceedings.** If the petitioner elects to withdraw the petition, the special master must issue an order concluding proceedings. The special master's order, upon entry, will be deemed a judgment for purposes of 42 U.S.C. § 300aa-15(e)(1).
- (e) Motion for Reconsideration.**
  - (1) Initial Motion.** Either party may file a motion for reconsideration of the special master's decision within 21 days after the issuance of the decision, if a judgment has not been entered and no motion for review under Vaccine Rule 23 has been filed.
  - (2) Response.** The special master may seek a response from the nonmoving party, specifying both the method of and the timing for the response.
  - (3) Ruling on the Motion.** The special master has the discretion to grant or deny the motion, in the interest of justice.
    - (A) If Granted.** If the special master grants the motion for reconsideration, the special master must file an order withdrawing the challenged decision. The decision, once withdrawn, becomes void for all purposes and the special master must subsequently enter a superseding decision. The special master may not, however:
      - (i)** issue an order withdrawing a decision if either a judgment has been entered or a motion for review has been filed; or
      - (ii)** issue a superseding decision reaching a result different from the original decision

without affording the nonmoving party an opportunity to respond to the moving party's arguments.

- (B) ***If Denied or Not Acted Upon.*** The filing of a motion for reconsideration will not toll the 30-day period for filing a motion for review pursuant to Vaccine Rule 23. If the special master denies the motion for reconsideration or fails to act upon the motion, the 30-day period for filing a motion for review will continue to run and either party may file a motion for review before the expiration of that period.

(As revised and reissued May 1, 2002; as amended Aug. 2, 2005, \_\_\_\_\_.)

### **TITLE III. JUDGMENT AND FURTHER PROCEEDINGS**

#### **Rule 11. Judgment**

- (a) **In General.** In the absence of a motion for review under Vaccine Rule 23, the clerk will enter judgment 30 days after either the filing of the special master's decision under Vaccine Rule 10 or the entry of an order of dismissal under Vaccine Rule 21(b). The clerk may enter judgment prior to the expiration of the 30-day period if each party files a notice stating that the party will not seek such review.
- (b) **Stipulation for Judgment.** Any stipulation for a money judgment must be signed by authorized representatives of the Secretary of Health and Human Services and the Attorney General.

(As revised and reissued May 1, 2002; as amended June 20, 2006, \_\_\_\_\_.)

#### **Rule 12. Election**

- (a) **In General.** Within 90 days after the entry

of judgment under Vaccine Rule 11, petitioner must file with the clerk an election either:

- (1) to accept the judgment; or
  - (2) to file a civil action for damages for the alleged injury or death.
- (b) **Failure to File an Election.** If petitioner fails to file an election within the time prescribed, petitioner will be deemed to have filed an election to accept the judgment.
- (c) **Moving for Limited Compensation.**
- (1) ***In General.*** If petitioner does not elect to receive an award of compensation, the election to file a civil action for damages may be accompanied by a motion for the limited compensation provided by 42 U.S.C. § 300aa-15(f)(2).
  - (2) ***Decision on the Motion.*** The clerk will forward the motion to the special master for a decision thereon. The decision of the special master on the motion constitutes a separate decision for purposes of Vaccine Rules 11, 18, and 23.
  - (3) ***Waiver.*** If such a motion is not filed at the time the election is filed, petitioner will be deemed to have waived the limited compensation.

(As revised and reissued May 1, 2002; as amended June 20, 2006, \_\_\_\_\_.)

#### **Rule 13. Attorney's Fees and Costs**

- (a) **In General.** Any request for attorney's fees and costs pursuant to 42 U.S.C. § 300aa-15(e) must be filed no later than 180 days after the entry of judgment or the filing of an order concluding proceedings under Vaccine Rule 10(d)(3) or 29.
- (b) **Decision on the Motion.** Except for a request for fees and costs arising under Vaccine Rule 34(b), the clerk will forward the fee request to the special master for a decision thereon. The decision of the special master on the fee request—including a request for interim fees—constitutes a separate decision for purposes of Vaccine Rules 11, 18, and 23.



(As revised and reissued May 1, 2002; as amended Aug. 2, 2005, \_\_\_\_\_.)

#### **TITLE IV. GENERAL PROVISIONS**

##### **Rule 14. Attorneys**

###### **(a) Eligibility to Practice.**

- (1) ***In General.*** An attorney is eligible to practice before the Office of Special Masters if the attorney is a member of the bar of the United States Court of Federal Claims under RCFC 83.1 and complies with the Vaccine Rules.
- (2) ***Pro Se Litigants.*** An individual who is not an attorney may represent oneself or a member of one's immediate family. The terms counsel, attorney, or attorney of record in the Vaccine Rules include such individuals appearing *pro se*.

###### **(b) Attorney of Record.**

- (1) ***In General.*** A party may have only one attorney of record in a case at any one time and, with the exception of a *pro se* litigant appearing under Vaccine Rule 14(a), must be represented by an attorney (not a firm) admitted to practice before the Court of Federal Claims. Any attorney assisting the attorney of record must be designated "of counsel."
- (2) ***Contact Information.*** The attorney of record must include on all filings the attorney's name, address, telephone number, and facsimile number and must promptly file with the clerk and serve on all other parties a notice of any change in the attorney's contact information.
- (3) ***Signing Filings.*** All filings must be signed in the attorney of record's name. Any attorney who is admitted to practice before the Court of Federal Claims may sign a filing in the attorney of record's name by adding the following after the name of the attorney of record: "by [the signing attorney's full name]."

- (c) ***Substituting Counsel.*** A party may substitute its attorney of record pursuant to RCFC 83.1(c)(4).

(As revised and reissued May 1, 2002. See Rules Committee Notes, *infra*.)

##### **Rule 15. Third Parties**

No person may intervene in a vaccine injury compensation proceeding, but the special master may afford all interested individuals an opportunity to submit relevant written information within 60 days after publication of notice of the petition in the Federal Register, or later with leave of the special master.

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

##### **Rule 16. Caption of Filings**

All filings, including the petition, must be captioned with the court's name, the case title and docket number, and the name of the assigned special master. (The petition should leave blank the spaces for the special master's name and the docket number.) See Appendix of Forms, Form 7.

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

##### **Rule 17. Serving and Filing Papers After the Petition**

###### **(a) Serving a Document.**

- (1) ***In General.*** A copy of every document filed with the clerk must be served on opposing counsel or the opposing unrepresented party.
- (2) ***Certificate of Service.*** A certificate of service in accordance with RCFC 5.3 must be appended to the original document and any copies thereof.

###### **(b) Filing a Document.**

- (1) ***In General.*** All pleadings and other papers required under the Vaccine Rules or by order of the special master or the court must be filed with the clerk at the address provided in Vaccine Rule 2. All matters should be brought

to the attention of the special master or the court through formal filings with the clerk rather than through correspondence.

**(2) Filing Defined.**

**(A) Paper Form.** A document in paper form is filed when it is received and marked filed by the clerk, not when mailed.

**(B) Electronic Form.** A document in electronic form is filed on the date stated in the “Notice of Electronic Filing.”

**(c) Date.** Each filing must bear on the signature page the date on which it is signed.

**(d) Number of Copies.** A party must file an original and 2 copies of each paper filed with the clerk, except that for a filing of 50 pages or more, an original and 1 copy will suffice.

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

**Rule 18. Availability of Filings**

**(a) In General.** All filings with the clerk pursuant to the Vaccine Rules are to be made available only to the special master, the judge, and the parties, with the exception of certain court-produced documents as set forth in subdivision (b) of this rule. A transcript prepared pursuant to Vaccine Rule 8(c) constitutes a filing for purposes of this rule.

**(b) Decision of the Special Master or Judge.** A decision of the special master or judge will be held for 14 days to afford each party an opportunity to object to the public disclosure of any information furnished by that party:

- (1)** that is a trade secret or commercial or financial in substance and is privileged or confidential; or
- (2)** that includes medical files or similar files, the disclosure of which would constitute a clearly unwarranted invasion of privacy.

An objecting party must provide the court with a proposed redacted version of the

decision. In the absence of an objection, the entire decision will be made public.

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

**Rule 19. Computing and Extending Time**

**(a) Computing Time.** The following criteria apply in computing any time period specified in these rules, in an order of the special master or the court, or in any applicable statute:

**(1) Day of the Event Excluded.** Exclude the day of the act, event, or default that begins the period.

**(2) Exclusions from Brief Periods.** Exclude intermediate Saturdays, Sundays, and legal holidays when the period is less than 11 days. For legal holidays, see RCFC 6(a)(4).

**(3) Last Day.** Include the last day of the period unless it is a Saturday, Sunday, or legal holiday or—if the act to be done is filing a paper in court—a day on which weather or other conditions make the clerk’s office inaccessible. When the last day is excluded, the period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or day when the clerk’s office is inaccessible.

**(b) Extending Time.**

**(1) In General.** The special master or the court may grant a motion for an enlargement of time for good cause shown except when such an extension is prohibited by these rules.

**(2) Contents of a Motion for Enlargement.** A motion for an enlargement of time must set forth:

- (A)** the specific number of additional days requested;
- (B)** the date to which the enlargement is to run;
- (C)** the total number of days granted in any previously filed motions for enlargement; and
- (D)** the reason for the enlargement.

- (3) **Communication With Opposing Counsel.** Prior to filing a motion for enlargement, the moving party must make a reasonable effort to discuss the motion with opposing counsel and must indicate in the motion whether an opposition will be filed, or, if opposing counsel cannot be consulted, an explanation of the efforts that were made to do so.

- (c) **Additional Time After Service By Mail.** When a party may or must act within a specified time after service and service is made by mail, 3 days are added to the prescribed period, unless the special master or the court orders otherwise.

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

**Rule 20. Motions and Other Papers; Time for Filing; Oral Argument**

- (a) **In General.** All motions must:
- (1) state with particularity the grounds for the motion;
  - (2) set forth the relief or order sought; and
  - (3) be in writing and filed with the clerk, unless made orally during a hearing.
- Any motion may be accompanied by a proposed order and any motion, objection, or response may be accompanied by a memorandum and, if necessary, by supporting affidavits or exhibits.
- (b) **Time for Filing.**
- (1) **Responses and Objections.** Unless otherwise provided in these rules or by order of the special master or the court, a response or an objection to a written motion must be filed within 14 days after service of the motion.
  - (2) **Replies.** A reply to a response or an objection may be filed within 7 days after service of the response or objection.
- (c) **Oral Argument.** A party desiring oral argument on a motion must so request in the motion or response.

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

**Rule 21. Dismissal of Petitions**

**(a) Voluntary Dismissal.**

- (1) **In General.** Petitioner may dismiss the petition without order of the special master or the court by filing:
  - (A) a notice of dismissal at any time before service of respondent's report; or
  - (B) a stipulation of dismissal signed by all parties who have appeared in the action.

- (2) **Effect.** Unless the notice or stipulation states otherwise, the dismissal is without prejudice, except that a notice of dismissal may, in the discretion of the special master or the court, be deemed to operate as an adjudication on the merits if filed by a petitioner who has previously dismissed the same claim.

- (3) **Concluding Proceedings.** A petition dismissed under this subdivision (a) will not result in a judgment pursuant to Vaccine Rule 11 for purposes of 42 U.S.C. § 300aa-21(a). For the court's administrative purposes, the special master will instead issue an order concluding proceedings.

**(b) Involuntary Dismissal.**

- (1) **In General.** The special master or the court may dismiss a petition or any claim therein for failure of the petitioner to prosecute or comply with these rules or any order of the special master or the court.
- (2) **Effect.** A petition dismissed under this subdivision (b) will result in a judgment pursuant to Vaccine Rule 11 for purposes of 42 U.S.C. § 300aa-21(a).

(As revised and reissued May 1, 2002; as amended Aug. 2, 2005, June 20, 2006, \_\_\_\_\_.)

**TITLE V. REVIEW OF A DECISION OF**

**Appendix B - Vaccine Rules**

## THE SPECIAL MASTER

**Rule 22. General** [Abrogated (eff. Jan. 2, 2001); abrogation published as part of revisions dated May 1, 2002.]

### **Rule 23. Motion for Review**

- (a) **In General.** To obtain review of the special master's decision, a party must file a motion for review with the clerk within 30 days after the date the decision is filed.
- (b) **Time Extensions.** No extensions of time will be permitted under this rule and the failure of a party to file a motion for review in a timely manner will constitute a waiver of the right to obtain review.

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

### **Rule 24. Memorandum of Objections**

- (a) **In General.** A motion for review must be accompanied by a memorandum of numbered objections to the decision.
- (b) **Contents of the Memorandum.** The memorandum must:
- (1) fully and specifically state and support each objection to the decision, including specific citations to the record created by the special master (e.g., to specific page numbers of the transcript, exhibits, or other papers);
  - (2) set forth any legal argument the party desires to present to the reviewing judge; and
  - (3) absent leave of the court, be limited to 20 pages and conform to the provisions of RCFC 5.4.

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

### **Rule 25. Response**

- (a) **In General.** A party may file a response to a motion for review within 30 days after the filing of the motion. If both parties file motions for review, each party may file a

response to the other party's motion. The response must:

- (1) be in memorandum form and fully respond to each numbered objection, including specific citations to the record created by the special master (e.g., to specific page numbers of the transcript, exhibits, or other papers);
  - (2) set forth any legal argument the party desires to present to the reviewing judge; and
  - (3) absent leave of the court, be limited to 20 pages and conform to the provisions of RCFC 5.4.
- (b) **Time Extensions.** No extensions of time will be permitted under this rule and the failure of a party to file a response in a timely manner will constitute a waiver of the right to respond.

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

### **Rule 26. Assigning a Case for Review**

After a motion for review has been filed with the clerk, the case will be assigned to a judge of the Court of Federal Claims pursuant to RCFC 40.1.

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

### **Rule 27. Reviewing a Decision of the Special Master**

After reviewing a decision of the special master, the assigned judge may:

- (a) uphold the findings of fact and conclusions of law and sustain the special master's decision;
- (b) set aside any findings of fact or conclusions of law found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law and issue a separate decision; or
- (c) remand the case to the special master for further action as directed.

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

**Rule 28. Time for Review**

- (a) **In General.** The assigned judge must complete the review within 120 days after the last date for the filing of a response under Vaccine Rule 25, excluding any days the case is before a special master on remand.
- (b) **Period of Remand.** If the judge remands the case to the special master, the total period of remand must not exceed 90 days.

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

**Rule 28.1 Decision on Remand**

- (a) **In General.** If the assigned judge remands the case to the special master, the special master, after completing the remand assignment, must file a decision on remand resolving the case, unless the remand order directs otherwise. The clerk must promptly notify the assigned judge of the filing of the decision on remand.
- (b) **Effect.** Unless otherwise specified in the remand order, the decision on remand constitutes a separate decision for purposes of Vaccine Rules 11, 18, and 23, i.e., judgment automatically will be entered in conformance with the special master's decision on remand unless a new motion for review is filed pursuant to Vaccine Rule 23.
- (c) **Motion for Review.** If a party seeks review of the decision on remand, the clerk will assign the case to the same judge who remanded the case.

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

**Rule 29. Withdrawing a Petition**

- (a) **Notice to Petitioner.** If the assigned judge fails to enter judgment within 420 days after the date the petition was filed, exclusive of any periods of remand or suspension pursuant to Vaccine Rule 9, the judge must file a notice to petitioner pursuant to 42 U.S.C. § 300aa-12(g)(2).
- (b) **Notice to Continue or to Withdraw the**

**Petition.** Within 30 days after the date of filing of the assigned judge's notice, the petitioner may file a notice to continue or to withdraw the petition pursuant to 42 U.S.C. § 300aa-21(b).

- (c) **Concluding Proceedings.** If the petitioner elects to withdraw the petition, the assigned judge must issue an order concluding proceedings. The judge's order, upon entry, will be deemed a judgment for purposes of 42 U.S.C. § 300aa-15(e)(1).

(As revised and reissued May 1, 2002; as amended Aug. 2, 2005, \_\_\_\_\_.)

**Rule 30. Judgment**

- (a) **In General.** Upon issuance of the assigned judge's decision on review, the clerk will enter judgment in accordance with the decision.
- (b) **Stipulation for Judgment.** Any stipulation for a money judgment must be signed by authorized representatives of the Secretary of Health and Human Services and the Attorney General.

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

**Rule 31. Motion for Reconsideration**

Within 10 days after entry of judgment, either party may file a motion for reconsideration of the assigned judge's decision in accordance with RCFC 59.

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

**Rule 32. Notice of Appeal**

To appeal a decision of the Court of Federal Claims, a party must file a notice of appeal with the clerk of the United States Court of Appeals for the Federal Circuit (i.e., a petition for review under 42 U.S.C. § 300aa-12(f)) within 60 days after the date of the entry of judgment.

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

### **Rule 33. Election**

- (a) **In General.** Within 90 days after the entry of judgment under Vaccine Rule 30, petitioner must file with the clerk an election as described in Vaccine Rule 12.
- (b) **Exception.** If an appeal is filed with the United States Court of Appeals for the Federal Circuit pursuant to Vaccine Rule 32, the 90-day period for filing an election will run not from the original date of judgment but from the date of the appellate court's mandate or any subsequent judgment of the Court of Federal Claims on remand, whichever occurs later.

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

### **Rule 34. Attorney's Fees and Costs Following Review**

- (a) **In General.** Except as provided in subdivision (b) of this rule, any request for attorney's fees and costs following review by an assigned judge must be filed in accordance with Vaccine Rule 13.
- (b) **Additional Fees and Costs.** Following review by an assigned judge of a special master's decision on attorney's fees and costs under Vaccine Rule 13, a request for any additional fees and costs relating to such review may be decided either by the assigned judge or by the special master on remand.

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

**Rule 35. Availability of Filings** [Abrogated (eff. Jan. 2, 2001); abrogation published as part of revisions dated May 1, 2002.]

## **VI. RELIEF FROM JUDGMENT**

### **Rule 36. Relief from a Judgment**

- (a) **In General.** If, after the entry of judgment or the issuance of an order concluding

proceedings pursuant to Vaccine Rule 10, 21, or 29, a party files a motion for reconsideration pursuant to RCFC 59 or otherwise seeks relief from a judgment or order pursuant to RCFC 60, the clerk will refer the motion as follows:

- (1) If the petition had previously been assigned to a judge for review pursuant to Vaccine Rule 23, the clerk will refer the motion to the assigned judge.
- (2) If the petition had not previously been assigned to a judge for review pursuant to Vaccine Rule 23, the clerk will refer the motion to the assigned special master.

### **(b) Ruling by the Special Master.**

- (1) **In General.** If a motion pursuant to RCFC 59 or 60 is referred to the special master pursuant to subdivision (a) of this rule, the special master must file a written ruling on the motion.
- (2) **Effect.** The ruling of the special master will be the final ruling of the court on the motion, unless a party files with the clerk a motion for review of that ruling.
- (3) **Motion for Review.** A party may file a motion for review of the special master's ruling, accompanied by a memorandum of objections to the ruling, within 30 days after the date of the ruling. See Vaccine Rules 23 and 24.
- (4) **Response.** The nonmoving party may file a response to a motion for review within 30 days after the filing of the motion. See Vaccine Rule 25.
- (5) **Length.** The motion and response of each party must, absent leave of the court, be limited to 20 pages and must conform to the provisions of RCFC 5.4. See Vaccine Rules 24 and 25.
- (6) **Assigning the Case for Review.** If a motion for review is filed with the clerk, the case will be assigned to a judge of the Court of Federal Claims pursuant to RCFC 40.1. See Vaccine Rule 26.
- (7) **Reviewing the Ruling of the Special**

**Master.** After reviewing the ruling of the special master, the assigned judge may set aside the ruling only if it is found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. See Vaccine Rule 27.

- (c) **If Judgment is Altered.** If the original judgment is modified pursuant to RCFC 59 or 60 or otherwise, and the petitioner is to receive any award for damages calculated with respect to the date of judgment, such damages must be calculated based on the date of the original judgment, unless the ruling of the special master or the court directs otherwise.

(As revised and reissued May 1, 2002, as amended \_\_\_\_\_.)

#### **Rules Committee Notes**

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#### **2009 Amendments**

The language of the Vaccine Rules has been amended to conform to the general restyling of the RCFC.

**Rule 13.** Subdivision (b) has been modified in two respects. First, the introductory phrase “Except for a request for fees and costs arising under Vaccine Rule 34(b)” was added to reflect the corresponding procedural change in Vaccine Rule 34(b) regarding a request for additional fees and costs. Second, the phrase “including a request for interim fees” was added to the second sentence to reflect the result in Avera v. Secretary of Health and Human Services, 515 F.3d 1343 (Fed. Cir. 2008).

**Rule 17.** Paragraph (b)(2) (“Filing Defined”) has been expanded to include electronic filings.

**Rule 34.** Subdivision (b) has been added to this rule to clarify that a request for additional attorney’s fees and costs incurred on a petition for review of a special master’s decision addressing attorney’s fees and costs may be decided either by the assigned judge or by the special master on remand.

**Rule 36.** The phrase “or the issuance of an

order concluding proceedings pursuant to Vaccine Rule 20, 21, or 29” has been added to the opening sentence of subdivision (a) to extend the remedies available under RCFC 59 (“New Trial; Reconsideration; Altering or Amending a Judgment”) and RCFC 60 (“Relief From a Judgment or Order”) to cases concluded by means other than a judgment.